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Chairman: Mr. Enkhsaikhan ..... (Mongolia)

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The meeting was called to order at 3.15 p.m.

Agenda item 153: Establishment of an international criminal court (*continued*) (A/53/189 and 387)

1. **Mr. Ka** (Senegal) said that the adoption of the Statute of the International Criminal Court in July 1998 had marked an important stage in the international community's efforts to build a world of justice and peace. In the twentieth century, too many acts of violence had gone unpunished, which was why his country had strongly supported the process of establishing the Court and had associated itself very early on with the "No Peace without Justice" campaign. It had also hosted in Dakar an African regional conference on awareness and harmonization of Africa's position in the Rome process. Lastly, it had been one of the first signatories to the Statute of the Court. It would show the same resolve in participating actively in the work of the Preparatory Commission created by the Final Act of the Rome Diplomatic Conference. It would ratify the Statute of the Court as soon as the Secretariat produced certified copies thereof.

2. The international community had taken an extremely important step in Rome, but much remained to be done. The Statute of the Court reflected a delicate consensus, for its framers had drawn on an assortment of national legal systems. Some people felt that it went too far, while others felt that it did not go far enough. As Mr. Bourdon, Secretary-General of the International Federation of Human Rights Leagues, had said, progress of the law always clashed with traditions, irritated certain interests and upset certain segments of the population. The codification and progressive development of international law in such a sensitive area was no exception. Nevertheless, the international community must maintain its momentum, and his delegation called on all States to accede to the Statute of the Court. The Court would only be effective and credible if it was truly universal.

3. With regard to the formalities for correcting certain errors in the original text of the Statute, his delegation wished to reiterate the importance of such a procedure. Of course, it was not a question of reopening the negotiations, but simply of restoring the accuracy of the provisions in question and of ensuring a coherent text by rectifying certain omissions. Lastly, every effort must be made to complete the tasks set forth in the Final Act within the necessary deadlines so that the Court came into operation as soon as possible.

4. **Mr. Mwangi** (Kenya) recalled that, as set out in the resolutions contained in the Final Act of the Rome Conference, the remaining tasks for making the Court a reality had been entrusted to the Preparatory Commission. The Conference had, *inter alia*, directed the Commission to take all possible measures to ensure that the Court came into operation without undue delay and to make the necessary arrangements for the commencement of its functions. It was therefore essential that the Commission begin its work at the earliest possible date; an organizational session could be convened as early as February or March 1999. What was even more important was that it agree on a definitive calendar of meetings for 1999 and at least an indicative programme of work for the period up to 30 June 2000, the date by which it was required to finalize the draft texts of the Rules of Procedure and Evidence and the Elements of Crimes. The drafting of those documents would no doubt be the Commission's most demanding task, not only because the outcome would have a direct bearing on the efficacy of the Court, but also because it would be an extremely complex process. The Commission would have to take fully into account the peculiarities of the Statute of the Court, including the political dimensions of the crimes with which it would deal.

5. The experiences of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, which had been critical to the development of jurisprudence in an uncharted area of international law, would be very useful. He suggested that, in the relevant resolution the General Assembly should invite the two Tribunals to share their experience and creativity, particularly on the procedural aspects of the Court.

6. Equally important to the success of the Preparatory Commission was the full participation of all its members in its deliberations. It was in the interest of the long-term legitimacy of the Court not only that Governments support the work of the Preparatory Commission but also that different legal systems be taken into account from the outset, particularly in the Rules of Procedure and Evidence. For that reason, it was important to facilitate the participation of developing countries which did not have the financial resources to send their experts. His delegation therefore called for the re-establishment of the voluntary trust fund for travel assistance to developing countries.

7. Lastly, the contribution made by non-governmental organizations to the work of the Preparatory Committee and the Diplomatic Conference could not go unnoticed. That was probably the first time that Governments and representatives of non-governmental organizations had worked so closely to draft an international instrument. His delegation hoped that that fruitful cooperation would continue for the entire duration of the preparatory process.

8. **Mr. Matsuda** (Japan) said that, while the adoption of the Statute of the International Criminal Court had been a

big step, much remained to be done to ensure that the Court was effective, credible and came into operation. As other delegations had pointed out, the most pressing tasks would be carried out by the Preparatory Commission, which had been asked to draft a number of instruments, including Rules of Procedure and Evidence and Elements of Crimes. One might think that those documents were not very important and were concerned merely with technical details. However, for all those who had participated in the process of establishing the Court, it was quite clear that they were no less important than the Statute, for at least two reasons. The obvious one was that the Statute was constructed in such a way that the Court would never be able to function without those documents. More importantly, the technical details dealt with in those documents were directly connected with the independence and impartiality of the Court.

9. His delegation strongly believed that, in their work in the Preparatory Commission, delegations must maintain the political commitment that they had displayed in Rome. At the same time, in order to make the Court a universal institution supported by the international community as a whole, those States which had not supported the adoption of the Statute must be kept in the discussion and allowed to express their views. His Government had worked actively for the creation of an independent and effective Court which had the confidence of the international community as a whole. It was ready to play an active role in the discussions to be conducted in the Preparatory Commission the following year.

10. **Mr. Powles** (New Zealand) said that his delegation associated itself fully with the statement made by the representative of Samoa on behalf of his own delegation and those of Australia, Fiji, the Federated States of Micronesia, New Zealand, Solomon Islands and Vanuatu.

11. The International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, established through the Security Council, had broken new ground. However, his delegation had always believed that a permanent court must go outside the framework of the Security Council. Like many other delegations, it had also felt that such a court must be just, independent and effective. The Statute of the International Criminal Court seemed to have achieved that goal. His delegation would, however, have liked the Court's jurisdiction to extend to the use of nuclear weapons and landmines as war crimes, and to acts of terrorism. His delegation was gratified that the Rome Conference had recognized that terrorist acts, by whomever perpetrated and whatever their methods or motives, were serious crimes of concern to the international community. It was also pleased that the Conference had insisted that women be fairly represented among the judges of the Court. Lastly, in order for the Court to function effectively, the Prosecutor must be given appropriate powers. The Statute reflected that in a way which should safeguard against any abuse of those powers. There was therefore no reason whatsoever to believe that the Office of the Prosecutor would not act with professionalism and integrity.

12. While the adoption of the Statute was a great achievement, it was up to the international community to ensure that the sound foundation on which the Court was built was put into practice. It was essential that the Preparatory Commission be given the resources and time needed to complete the important tasks entrusted to it. Moreover, funding decisions must be taken which enabled the Court to function adequately from the start. Lastly, his delegation urged States to demonstrate their commitment by signing the Statute and setting in motion the domestic processes required for ratification.

13. **Ms. Dascalopoulou** (Greece) noted that the International Criminal Court, whose Statute had been adopted in Rome in July 1998, would have a dual role: to try, with the greatest degree of fairness, the perpetrators of very serious crimes and to act as a powerful deterrent. Considering the adoption of the Statute of the International Criminal Court an indisputable success, Greece had been among the first countries to sign the Statute on 18 July 1998.

14. The Statute as adopted presented very clear advantages: its wording left very little room for doubt or imprecision; the crimes over which the Court had jurisdiction were defined exhaustively; and the Statute applied to both international and internal conflicts. However, it was not without shortcomings. The use of certain weapons was omitted from the list of crimes; it was possible for States to opt out of the Court's jurisdiction over war crimes; the State of which the accused was a national and not the custodial State must be a party to the Statute in order for the Court to have jurisdiction; and the principle of complementarity had been interpreted far too broadly.

15. Among the Statute's shortcomings was one which had particular importance for Greece: the Court did not have jurisdiction over the crime of aggression. It was paradoxical and regrettable that a crime such as aggression, which had been recognized as a crime more than a half century previously by the Nürnburg and Tokyo tribunals, had not found its way into the Statute of the Court, which included far less serious crimes. The Preparatory Commission had been mandated to draft a definition of aggression and to work out the conditions under which the Court would exercise its jurisdiction. Her delegation hoped that the Commission, which had also been mandated to draft the

Rules of Procedure and Evidence, would devote the necessary time and effort to fulfilling its mandate completely.

16. **Mr. Kolby** (Norway) said that the Statute adopted in Rome provided for an independent, effective and credible Court. The fact that legal experts from all regions, legal systems and cultures had taken part in its drafting guaranteed the universality of the Court.

17. Having been consistently supportive of measures which would prevent the Court from becoming a political tool, his Government believed that the Statute provided credible protection against any biased, arbitrary or otherwise unwarranted prosecutions. Moreover, the principle of complementarity ensured that the Court would have jurisdiction only where national investigations and prosecutions were not carried out genuinely.

18. Notwithstanding the euphoria surrounding the Statute's adoption, much remained to be done both internationally, in the future Preparatory Commission, and nationally, through the activation of procedures for the signature and ratification of the Statute. Norway had signed the Statute on 28 August 1998 and the ratification procedure was in progress.

19. **Mr. Simonović** (Croatia) said that the adoption of the Statute of the International Criminal Court had been an important legal, political and moral victory. Legal, because the Court represented a new stage in the evolution of the international system of criminal justice and the cornerstone for its further development. Finally, not only States, but individuals, could be held internationally accountable for their actions. At last, no one could invoke lofty goals for the justification of heinous crimes which offended the conscience of humankind. Croatia welcomed the universality of the Court, which would enable it to operate in a more consistent way towards all members of the international community and in accordance with the fundamental principle of the sovereign equality of States.

20. Politically, the establishment of the Court would have a profound effect on the conduct of States' domestic and foreign policy. The certainty that perpetrators of crimes falling under the jurisdiction of the Court would be brought to justice would act as a deterrent to those who might be tempted to resort to terror and threats as a means of solving domestic or international crises. The moral dimension of the Court was that it would make it possible to put an end to impunity, which had encouraged the proliferation of breaches of international humanitarian law. In that connection, his delegation regretted that the Statute contained a transitional provision enabling States parties to significantly delay the exercise of the Court's jurisdiction after the Statute entered into force.

21. Croatia had contributed to the establishment of the International Criminal Court both directly and indirectly. Its delegation had taken an active part in the negotiations, and had supported the concept of individual criminal responsibility while insisting on full respect for the rights of the accused. It had striven to ensure that the Prosecutor had extensive powers to initiate investigations and was independent of political developments. It had also insisted on the right of persons to seek compensation in the case of unlawful arrest and detention. Indirectly, his Government had contributed to the Court's establishment by drawing international attention to human rights violations and by alerting world public opinion to what was happening in its territory and in Bosnia and Herzegovina.

22. Croatia had signed the Statute of the Court on 12 October 1998 and called on States which had not yet done so to sign and ratify the Statute as a matter of priority.

23. **Mr. Cho Chang-beom** (Republic of Korea) welcomed the adoption of the Statute of the International Criminal Court, which it believed would mark an important milestone in the development of the international legal system. His delegation considered that, despite the inevitable compromises, the Statute was balanced and guaranteed the fairness, independence and effectiveness of the Court.

24. It was important not to lose the momentum generated by the success achieved in Rome. The Preparatory Commission must start its work early in 1999 in order to finalize the Rules of Procedure and Evidence and the Elements of Crimes by 30 June 2000. His delegation attached special importance to that task, as the contents of the two documents would determine whether or not individual States decided to ratify the Statute. Given the complexity of those tasks, the Commission should be able to meet as often as was necessary to complete them. His delegation therefore believed that the resolution to be adopted by the General Assembly at its current session on the establishment of the International Criminal Court should lay down clearly the mandate and timetable of the Preparatory Commission, provide for a sufficient number of meetings of the Commission, stipulate that the conditions under which non-governmental organizations participated in the Commission should be the same as for the Preparatory Committee and the Diplomatic Conference, and that voluntary trust funds should be established to help developing and least developed countries participate in the Preparatory Commission.

The meeting rose at 4.20 p.m.